

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

OBAIDO HITTO,  
Plaintff,

v.

THE CITY OF MURPHY and KEVIN  
MCGEE, individually and in his official  
capacity,  
Defendants.

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Case No. 4:08-cv-221

**ORDER GRANTING PLAINTIFF’S  
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

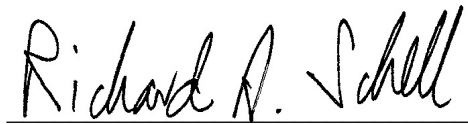
Before the court is the “Plaintiff’s Motion for Leave to File Plaintiff’s First Amended Complaint” (de # 19) and the Defendants’ Response (de # 22). The Plaintiff has filed his Original Complaint with the court, in response to which the Defendants filed a motion to dismiss under Rule 12(b)(6). The Plaintiff seeks leave of the court to file his Amended Complaint “to clarify his causes of action.”

Rule 15(a) allows a party to amend his pleading once as a matter of course at any time “before being served with a responsive pleading.” FED. R. CIV. P. 15(a)(1)(A). The Defendants’ Rule 12(b)(6) motion is not a responsive pleading and, therefore, does not extinguish the Plaintiff’s right to amend his complaint without leave. *McKinney v. Irving Indep. School Dist.*, 309 F.3d 308, 315 (5<sup>th</sup> Cir. 2002). Accordingly, the court is of the opinion that the “Plaintiff’s Motion for Leave to File Plaintiff’s First Amended Complaint” (de # 19) should be, and hereby is, GRANTED. The Defendants ask the court to grant them 30 days to amend their motion to dismiss so that it responds to the Amended Complaint. The court GRANTS that request, *see Surplus Source Group, LLC v. Mid Am. Engine, Inc.*, No. 4:08-cv-049, 2008 U.S. Dist. LEXIS 47949, at \*2 (June 19, 2008), with

the following caveat: the time within which the Defendants must file an answer remains 20 days under Rule 12(a)(1)(A), so the Defendants run the risk of finding themselves in default should their amended Rule 12(b)(6) motion be filed more than 20 days after being served with the Amended Complaint.

IT IS SO ORDERED.

**SIGNED this the 26th day of September, 2008.**

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive style with a horizontal line underneath the name.

RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE